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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,999	04/03/2001	Anthony V. Pugliese III	S2551010.1	6455

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EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,999

Applicant(s)

PUGLIESE ET AL.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 43-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/01; 10/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II (Claims 10-42) in the reply filed on 14 December 2004 is acknowledged. The traversal is on the ground(s) that restricted claims are closely related and should be considered together with supporting arguments. This is not found persuasive because each group can stand alone as potential patentable subject matter as originally filed without risk of infringing on other groups. The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

1. Claims 23-36 and 38-41 are objected to because of the following informalities:
Misnumbered claims have been renumbered as:
 - Original Claims 23 and 24 (page 86) were repeated. The second pair of claims numbered 23 and 24 was renumbered 25 and 26 respectively.
 - Original Claims 25-36 were renumbered as Claims 27-38 respectively to reflect the renumbering as noted above.
 - Original Claim 38 was misnumbered. Renumbering as noted above rennumbers Claim 38 as Claim 39.

- Original Claims 39-41 were renumbered as Claims 40-42 respectively to reflect the renumbering as noted above.

Appropriate correction is required.

Specification

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

35 USC § 101

3. The Examiner notes that in light of the specification claims are interpreted to rely upon non-trivial use of technology. Connecting shoppers electronically provides a practical application of the technological arts as supported by the Applicant's specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 10-22, 24-32, 34, and 37-40 are rejected under 35 USC 102(e) as being anticipated by Tavor et al. (US 6,070,149, hereinafter referred to as "Tavor").**

Tavor teaches all the limitations of Claims 10-15, 16-22, 24-32, 34, and 37-40. For example, Tavor discloses a system and method for enabling shoppers to connect to web-based shopping system to interact with a sales representative system for providing sales guidance and interaction with a sales representative during a shopping session (e.g. live or human persona generated by the system) (see at least abstract; Fig. 1 (22, 24, 26, 28); col. 1, line 5 through col. 2, lines 64).

- connecting shoppers electronically with a sales assistant, enabling a live query and response session between a shopper and said sales assistant:
live shopper and sales assistant can be either logic-based or human being acting as a sales assistant (see at least col. 3, lines 31-41, 49-57);
shopper making queries; conducting live chat with live human or human persona managed by the system- real or illusion of a real human conversation (see at least col. 9, lines 27-32); live sales representative briefed by the system regarding shopper interests before chatting with shopper; purchase history page helps sales assistant move the chat in the right direction (see at least col. 3, lines 54-57; col. 40, lines 64-67); adding sales representative functions to a virtual store (see at least col. 1, lines 51-58).

- displaying items selected by said sales assistant: logic-based or human sales assistant advises and makes product suggestions (see at least col. 3, lines 5-48);
- determining shopping criteria: (see at least col. 3, lines 31-41).
- creating a shopper profile; selecting items for display based on a shopper's profile: detection engine recognizes user characteristics and modifies the session from user to user according to the individual (see at least col. 3, lines 42-48).
- dynamically altered views: detection engine twists the session course (see at least col. 30, lines 28-32); change visual appearance of a question/answer session by outputting more multi-media (see at least col. 31, lines 9-14); changing the test of a question/recommendation based on specific conditions (see at least col. 31, lines 15-18).
- demographics: storing in a file the buyer's personal data (e.g. last name); employing user gender and age (see at least col. 35, lines 43-55).
- making payment: (see at least Fig. 14 (168); col. 3, lines 39-41).
- shopping cart: purchase mechanism displayed on shoppers web browser (see at least col. 11, lines 1-14).
- product availability: (see at least col. 3, lines 23-25).
- promotions: using coupons, discounted pricing, and total price including discounts (please note examiner's interpretation: receiving a discount is a

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reward for participating with the service) (see at least Fig. 14 (162, 164, 166, 170); col. 14, lines 1-9).

- marketing reports: provides market advisories adapted to shopper (see at least abstract; col. 3, lines 31-36).
- networks: (see at least col. 2, lines 35-50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 23, 41, and 42 are rejected under 35 USC 103(a) as being unpatentable over Tavor (US 6,070,149) in view of Official Notice (regarding old and well known in the arts, hereinafter referred to as "ON1").**

Tavor teaches all the above as noted under the 102(e) rejection and teaches the shopper providing credit card information and shipping information (see at least col. 23, lines 13-15), but does not disclose delivery modes and delivery dates to a shopper. The Examiner takes the position that is old and well known in the arts for retail merchants or online merchants to provide shipping modes and delivery dates to customers to meet their needs (e.g. ground, second day, next day air). Therefore it would have been obvious to one of ordinary skill in the art at

time of the invention to modify the method of Tavor to provide shipping options as taught by ON1, in order to provide shoppers shipping modes and delivery dates to meet their needs, and thereby attract shoppers to the service.

- 6. Claim 33 is rejected under 35 USC 103(a) as being unpatentable over Tavor (US 6,070,149) in view of Official Notice (regarding old and well known in the arts, hereinafter referred to as "ON2").**

Tavor teaches all the above as noted under the 102(e) rejection and teaches a) selling products to shoppers based on available inventory or recommending available products, and b) bargaining with a shopper based on price and/or quantity, but does disclose dynamically priced goods based on inventory levels. The Examiner takes the position that it is old and well known in the arts for merchants to change a product's price as available inventory increases or decreases in order to meet changing business needs. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Tavor to change pricing based on inventory levels as taught by ON2, in order to meet changing business needs, and thereby attract shoppers and sellers to the service.

- 7. Claims 35 and 36 are rejected under 35 USC 103(a) as being unpatentable over Tavor (US 6,070,149) in view of Business Wire (PTO-892, Item: U, hereinafter referred to as "BW").**

Tavor teaches all the above as noted under the 102(e) rejection and teaches a) online chat, and b) system support for video transmission, but does not disclose video chat between one or more shoppers. BW teaches video conferencing online and multi-party video chat to provide consumers and business with high quality video conferencing (U: see at least pages 1 and 2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Tavor to implement multi-party video chat as taught by BW, in order to shoppers and sales agents with high quality video chat, and thereby attract shoppers desiring visual contact with a sales representative.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 703-605-4253. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M. Pond
Primary Examiner
03 March 2005